

Focus On: New York City Independent Budget Office The Preliminary Budget

March 2021

“Carter Case” Spending for Students With Special Needs Continues to Grow Rapidly

The Mayor’s Preliminary Budget for 2022, released in January, added \$220 million to the 2021 budget for Carter Case costs at the Department of Education (DOE), an increase of 51 percent from the amount budgeted in the 2021 Adopted Budget. (Unless otherwise indicated, all years refer to city fiscal years.) Carter Cases are a relatively little-known section of the DOE’s expense budget, although their rapidly growing cost has drawn increasing attention and prompted efforts to control future growth. Under federal law, children with special needs are entitled to a “free and appropriate education” in the least restrictive educational environment. The 1993 United States Supreme Court’s decision in *Florence County School District Four v. Carter* affirmed that parents who disagree with their child’s individualized education plan (IEP) developed by their public school district’s Committee for Special Education (CSE) can enroll their child in a private school they believe better meets their child’s special needs. Parents can then seek reimbursement from the school district for tuition costs at the new school.

In order to be able to seek reimbursement, parents need to notify the CSE that they are rejecting the individualized education plan recommendation, enroll the student in a new private school that provides the services they are seeking, and begin paying the tuition. If the CSE maintains there is an appropriate public school program that could meet the student’s needs, an impartial hearing takes place to determine whether the private school placement was necessary to enable the educational progress of the student. Parents who pursue Carter Case reimbursement face the risk that the impartial hearing findings will not require the DOE to pay tuition. Moreover, even when parents have a strong case for private school placement, they must have the financial resources to pay tuition while the case is pending.

In September 2014, the DOE implemented a set of changes to simplify and expedite the reimbursement process for

parents. First, the DOE set a goal of settling Carter Cases within a 15-day window after receiving notice of private school placement. Second, the DOE said it would not re-litigate settled cases unless a student’s IEP is changed or when the child enters the final grade of his or her school. Third, the DOE would only require paperwork from parents every three years.

Recent Budget Actions. The addition of \$220 million to the current year’s budget for Carter Cases brings the 2021 budget for these expenses to \$653 million. Forty percent of the increase was due to settlements of cases from prior years. Similarly, last year’s Preliminary Budget included a \$150 million increase in 2020 for prior year Carter Cases that raised the budget at that time to more than \$540 million. Nonetheless, actual expenditures for Carter Cases in 2020 were \$710 million, 31.4 percent higher than the budgeted amount. Despite this rapid growth, the additional \$220 million added to the Preliminary Budget is only a one-year adjustment for this fiscal year and has not been included (baselined) beyond 2021.

The increases for 2020 and 2021 in Carter Case costs followed efforts by the DOE to improve special education offerings, in part to encourage families to choose DOE services for their children with special needs rather than enrolling in private schools. In April 2019, the Mayor’s Executive Budget for 2020 included \$33.4 million in additional special education funding within the DOE, plus more staff to process Carter Cases. These included: 200 psychologists, therapists, and social workers to improve assessment timeliness; 338 teachers, paraprofessionals, therapists, and administrative officers to expand special education supports in DOE pre-k classes; and 44 attorneys and 8 community coordinators to support the processing of cases. An additional 63 teachers, paraprofessionals, and therapists were hired for a special program to support

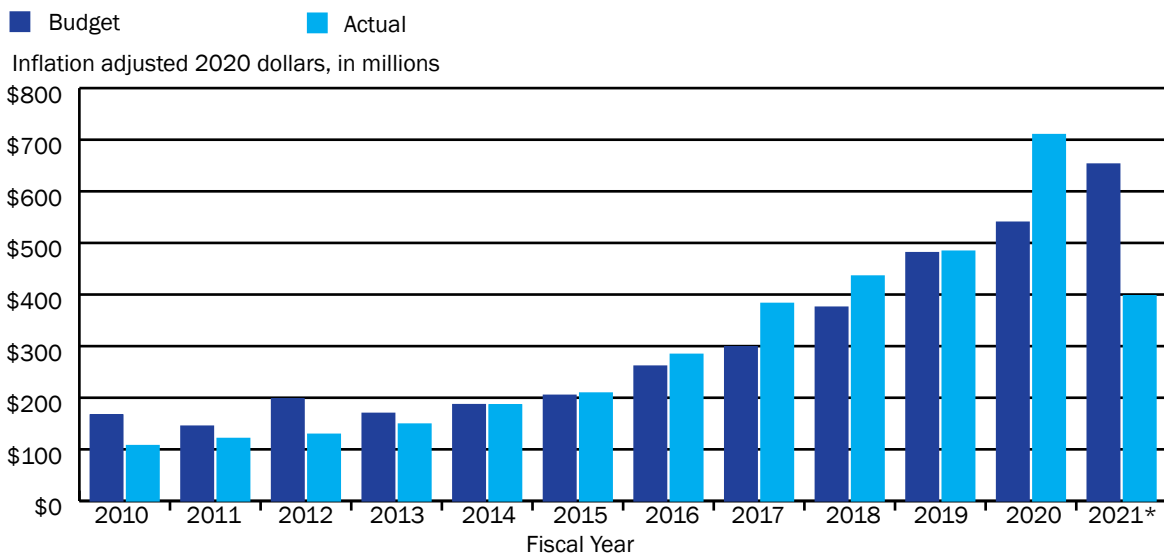


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Carter Case Expenditures Up Sharply In 2020

SOURCE: Financial Management System
NOTE: *Year to date as of December 2020

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students such as those with autism spectrum disorder in the citywide special education District 75, which serves students with the most challenging disabilities. There was also funding for a pilot literacy program in early grade Integrated Co-Teaching classrooms, in which 60 percent of the students are general education students and 40 percent of students have an IEP.

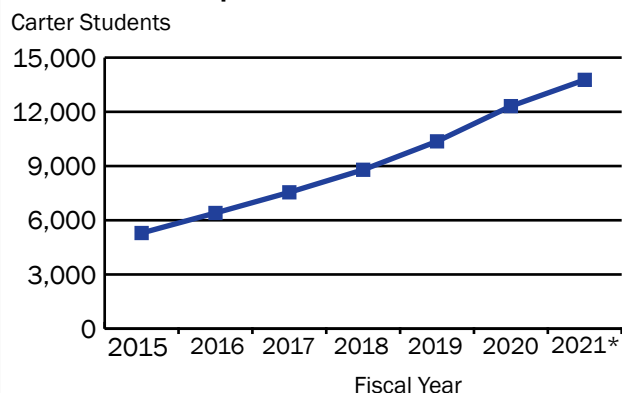
The goal in adding these supports was partly to increase in-house capacity to meet the education needs of more students with special needs in order to stem future cases. However, based on the additional \$370 million in combined increases over the amounts initially budgeted for Carter Cases over the two years since spending was ramped up to improve special education, they do not appear to be paying off yet. The number of Carter students has risen steadily in

recent years, from roughly 5,300 in 2015 to almost 14,000 so far this year.

Is Rising Enrollment Driving Spending on Carter Cases?

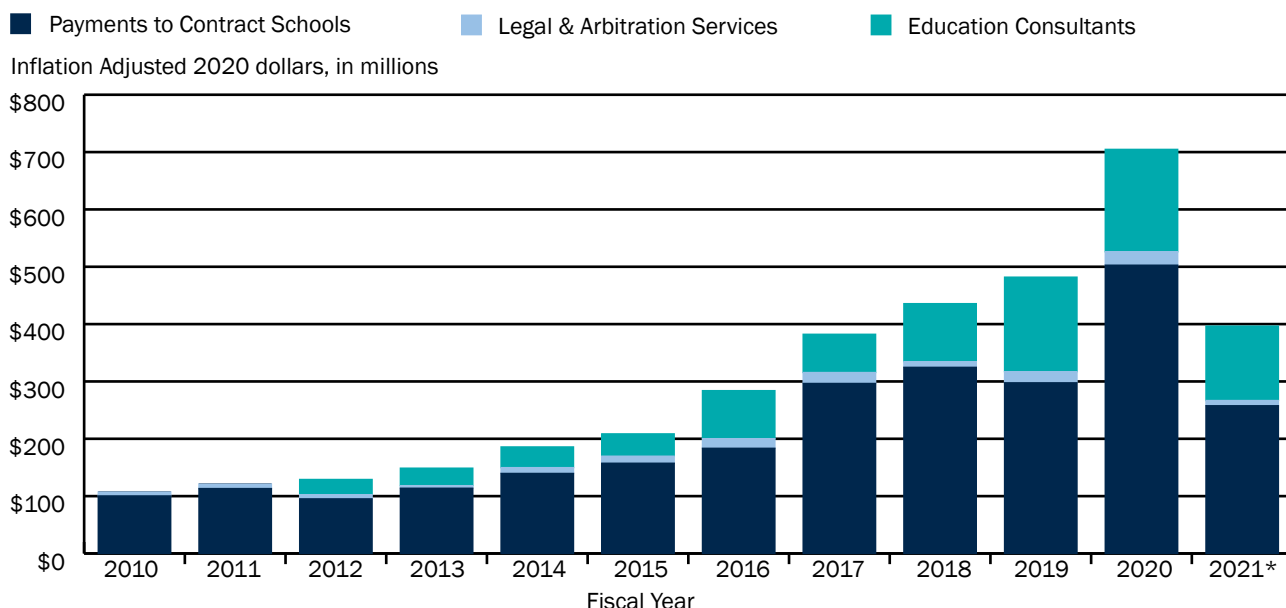
As the number of Carter Case students for whom the DOE is paying tuition has more than doubled over the past few years, expenditures have also risen sharply. Total expenditures for Carter Cases, adjusted for inflation, grew by more than 500 percent over a little more than a decade, from \$107 million in 2010 to \$710 million in 2020. Note, however, that because some tuition costs are reported when the payments are made—which can be after the student has enrolled at their new school—there is no consistent relationship between enrollment growth and spending growth from one year to the next.

While enrollment growth is a critical factor in explaining increases in Carter Case spending, other factors are also important. Carter Case expenditures are divided into four categories: tuition, education consultants, legal and arbitration services, and transportation. Tuition costs include payments to contract schools for Carter Case students who are currently enrolled, as well as reimbursement payments to families who had been paying tuition while their cases were processed. Education consultants deliver related services—such as behavioral analysis, speech, occupational and physical therapy—directly to Carter Case students. Rising costs for tuition and education consultants have remained important factors driving expenditures for Carter Cases. Legal and arbitration costs cover expenses incurred during the impartial

Carter Students Up 160 Percent In Seven Years

SOURCE: Mayor's Office of Management and Budget
NOTE: *Data as of February 2021

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Tuition Payments Drive Carter Case Expenditures

SOURCE: Financial Management System

NOTES: *Year to date as of December 2020. Additional expenditures for transportation (not shown) comprise less than 1 percent of Carter Case expenditures each year.

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hearing process and generally total around 5 percent of expenditures each year, while transportation typically accounts for less than 1 percent of annual spending.

Annual spending growth averaged 21.4 percent over the period, with the single largest increase, 46.7 percent, in 2020, driven by tuition payments. Tuition payments have increased almost every year, and these costs have ranged from 61.5 percent to more than 93 percent of total expenditures each year since 2010. In 2020, tuition payments were \$503 million, including some payments for prior years that for accounting reasons could not be accrued back. Actual tuition costs per student can vary widely, depending on the tuition charged by the particular school or program as well as the level of services provided to each individual student.

While tuition payments have continued to comprise the largest share of costs, spending on education consultants has also grown in recent years. In 2010 and 2011 there were no expenditures for education consultants, but from 2012 on, consultants have represented anywhere from 17.4 percent to 34.1 percent of expenditures. Through December of the current fiscal year, actual expenditures for consultants (\$130 million) are already almost three-quarters of the amount spent on consultants for all of 2020, which was \$179 million.

In 2020, legal and arbitration costs totaled \$23 million and transportation expenditures were \$5.3 million. Despite being a key factor in case settlements, legal and arbitration expenditures over the decade have only ranged between 2.3 percent and 6.6 percent of the total.

From the DOE's fiscal perspective, Carter Case expenditures are difficult to budget for because they are largely determined by two factors that are out of the department's control: private school tuition costs and how often parents succeed when seeking reimbursement for services to meet their children's needs. Current spending patterns as of December 2020 already show that expenditures for education consultants exceeded initial budget projections by \$76 million. Unless there is excess capacity elsewhere in the Carter Case budget, it is likely that additional city funds will be needed to fill the gaps in the current year. Despite higher-than-budgeted spending last year and this year, the 2022 Preliminary Budget left the Carter Case budget unchanged at \$474 million, an amount that is once again likely to prove insufficient given recent spending trends.

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